In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 461 of 1985
Date of decision: 21-08-2007

Municipality Safidon, District Jind

---Defendent-Appellant

Vs.

Puran Chand

---Plaintiff-Respondent

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**

Present: Mr.Tarunveer Vashisht, Advocate for
Mr. Arun Walia, Advocate,
for the defendant-appellant.

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M.M.KUMAR J.

ORDER

This is defendant's appeal filed under Section 100 of the Code of Civil Procedure, 1908 challenging judgment and decree dated 6.11.1984 passed by the learned Additional District Judge (I), Jind affirming the finding recorded by Sub Judge First Class, Saffidon in his judgment and decree dated 7.12.1982. The defendant-appellant has claimed that following question of law would emerge for determination of this Court under Section 100 C.P.C.:-

> " whether the principle of res judicata would apply to the instant civil suit in view of the earlier judgment and decree passed by Sub Judge Ist Class, Saffidon, Exhibit D-3 and Exhibit D-4, which was affirmed by the learned Appellate Court vide its judgment Exhibit D-5?"

A specific issue being issue No. 4 was framed by the learned trial Court and the findings recorded by the learned trial Court show that the land in question in the instant suit is different than the one which was the subject matter of dispute in the earlier litigation culminating in passing judgment and decree Exhibits D-3 and D-4, which was upheld in appeal vide judgment and decree Exhibit D-5. The view of the learned trial Court on issue No. 4 reads as under:-

> "It has been argued that a similar suit of the plaintiff against Ram Chander and Notified Area Committee, Safidon which was predecessor Committed (Committee?)of the present defendant was dismissed by learned Sh. V.P.Chaudhary the then Sub Judge Ist Class, Safidon, vide copy of judgment at Ex. D-3 copy of decree-sheet being at Ex. D-4 and that the judgment was affirmed by the court of learned Additional District Judge, Jind, vide copy of judgment at Ex. P-5. I have gone through the description of the property as given in the decree-sheet at Ex. D-4. The same do not tally with the property under dispute. The plaintiff has specifically stated that the suit was in respect of the other property which was situated towards the south of the house of Joginder Singh Rana, whereas the suit property is situated towards the north of Joginder Singh's house. The defendant has not been able to prove that the property under dispute

> was the same as was under dispute in the previous litigation. As such the previous litigation has no effect upon the present suit. The two sides on the North and South of the property under dispute in the previous litigation as recorded in the decree-sheet copy at Ex. D-4 do not tally at all with the sides on North and south of the present property. The defendant has not brought any cogent evidence to show that the previous litigation was in respect of the same property as is under dispute in the present litigation. The issue is accordingly decided against the defendant."

The aforementioned finding recorded by the learned trial Court stands accepted by the learned Additional District Judge as is evident from perusal of para 5 of his judgment.

Mr. Tarunveer Vashisht, learned counsel for the defendant-appellant has argued that the land in dispute is within the protective wall (Kot Pannah) as was the property in dispute in the earlier litigation. According to the learned counsel, the wall is found on North and South and, therefore, the distinction drawn by the learned trial Court to decide the issue against the defendant-appellant is wholly erroneous and deserved to be reversed. Learned counsel has emphasised that the plaintiff-respondent is not even the owner of the property in dispute and he cannot be granted the relief of permanent injunction.

No one has put in appearance on behalf of the plaintiff-respondent.

After hearing learned counsel for the defendant-appellant, I am of the considered view that the learned trial Court has recorded a categorical finding that the property in the earlier suit was entirely different than the one which is subject matter of dispute in the instant suit culminating in the filing of instant appeal. It is noticed, that the averments made by the plaintiff-respondent in his plaint filed in earlier suit specifically stated that the suit was in respect of some other property which was situated towards South of the house of one Joginder Singh Rana whereas the suit property in the instant suit was situated towards North of the house of aforementioned Joginder Singh Rana. The onus to prove the issue was on the defendant-appellant and it has remained unable to prove the same. It has further been recorded that the dimensions of the property do not tally with each other as depicted in the copy of the decree sheet Exhibit D-4. It was on the basis of the aforementioned categorical finding that the plea of res judicata was repelled and the same has been upheld by the learned Appellate Court. The defendant-appellant has many hurdles to cross before the finding recorded by the learned trial Court was affirmed by the learned Appellate Court, could be reversed by this Court in a second appeal under Section 100 of the Code. It is well settled that this Court in exercise of jurisdiction under Section 100 of the Code can over-turn the findings if such findings are bald and are not based on any evidence, as has been held by Hon'ble the Supreme Court in **Kulwant kaur Vs. Gurdial Singh Mann** 2001(2) PLR 492. However, the instant case does not fall in that category. The defendant-appellant has claimed the issue concerning res- judicata but has not been able to lead any evidence whereas the plaintiff-respondent had specifically pleaded that the earlier suit filed by him was in respect of

some other property which was situated towards South of the house of Joginder Singh Rana whereas the present suit is in respect of property situated towards North of house of Joginder Singh Rana. There is no scope to interfere in the finding recorded by both the Courts below. Therefore, the question raised by the learned counsel for the defendant-appellant has to be answered against the defendant-appellant by affirming the finding recorded by both the Courts below. It is ordered accordingly.

No other argument has been raised.

In view of the above, this appeal fails and the same is hereby dismissed.

(M.M.KUMAR)
JUDGE

August 21, 2007
paramjit